IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2002

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THE HONOURABLE MR. JUSTICE V.KANAGARAJ

C.R.P. No.2734 of 1997

Bharat Kumar .. Petitioner

-Vs-

The Commissioner,
Corporation of Chennai,
Chennai. .. Respondent

Petition filed under Article 227 of the Constitution of India praying for the relief as stated therein.

For petitioner : Mr.Himmatmal Mardia

For respondent : No appearance

:O R D E R

This Civil Revision Petition has been filed under Article 227 of the Constitution of India as against the judgment and decree dated 30.8.1996 made in M.T.A. No.58 of 1994 by the Court of Principal Judge, City Civil Court, Madras, which itself has been filed against the order passed by the Chairman, Taxation Appeals Committee, Corporation of Madras in T.A.C. No.1003 of 1993 dated 16.11.1994.

2. Tracing the history of the case, it comes to be known that the subject matter is regarding the Corporation tax levied as half yearly tax pertaining to the building of the petitioner, who is the appellant before the lower court. The case of the petitioner before the initial authority is that for the property bearing door No.86/2, Govindappa Naicken Street, Chennai-1, the tribunal has fixed the annual value of the property at Rs.1,74,720/= and dubbing the same as excessive, the petitioner, challenging the said order of the tribunal, the Taxation Appeals Committee, Corporation of Madras in T.A.C. No.1003 of 199 3 dated 16.11.1994, has preferred an appeal before the appellate forum, the City Civil Court, Madras and the said court also having partly allowed the appeal of the tribunal, thereby modifying the rental value as Rs.15,000/= per month and directing to fix the half yearly tax and accordingly had passed its order dated 30.8.1996 and it is against this order of the appellate authority, the Principal Judge, City Civil Court, Madras the

petitioner has come forward to file the above revision under Article 227 of the Constitution of India on grounds such as (i) that the lower court has filed to apply the basic principles contemplated under the Act to fix the annual rental value of the property; (ii) that the actual area of construction in all the floors is only 7200 sq.ft. and not 8800 sq.ft, which the lower court has failed to note; (iii) that the lower court has failed to give finding that the premises bearing door No.86/1 and 86/2 in Govindappa Naicken Street, Madras-1 are two portions of the very same property having a common passage divided among the petitioner and his brother and since both the properties are more or less the same in nature, the extent and usage, there cannot be vast difference in the annual rental value of the same if uniform principles as laid down by the Act are adopted; (iv) that the lower court has not disclosed the reasons and the basis on which the rental value is fixed at Rs.15,000/= per month; (v) that the lower court had failed to apply the norms

of G.O. Ms.No.1178 of 1987 dated 10.12.1987 in its perspective; and on such grounds, the petitioner would pray to allow the above civil revision petition as prayed for.

3. During arguments, the learned counsel appearing on behalf of the petitioner, besides tracing the facts and circumstances encircling the case, would ultimately end up saying that the Taxation Appeals Committee or the appellate authority have not assigned any tangible reason to arrive at their conclusions for fixing the annual rental value in the manner that they have been fixed; that Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act should have been followed; that no conclusion had been given to the petitioner by these authorities as to how the value is arrived at and that the notice issued by the respondent does not disclose the details and the reasons for the rental value.

4. Summing up the case of the petitioner in the above manner, the learned counsel would cite three judgments respectively reported in (i) (1997) II MLJ 457 (RAMASWAMY vs. COMMISSIONER, CORPORATION OF MADRAS), (ii) (1993) II MLJ 262 (MAGDOOM SHERIFF alias SULTAN SHERIFF vs. KANCHEEPURAM MUNICIPALITY) and (iii) (1995) II MLJ 43 (DINDIGUL ANNA TAX PAYERS SANGAM vs. GOVT. OF TAMIL NADU). So far as the first judgment cited above is concerned, it is held therein:

"Wherever buildings are subject to rent- control restrictions, the rental value has to be fixed with reference to the fair rent, if any, fixed under the statutory provisions for the building and if no fair rent has been fixed by the Rent Controller, the municipal authorities have to apply the provisions of the Rent Control Act and determine the fair rent for the building before assessing the property to tax."

So far as the second judgment cited above is concerned, it is held therein:

"The main point argued by the learned counsel for the appellant is that the assessment made on 27.12.1977, enhancing the property tax from

Rs.633-44 to Rs.2,063-04 was not in accordance with Section 82(2) of the abovesaid Act, and the decision in The Guntur Muncipal Council V. The Guntur Town Rate Payers' Association, (1971) 2 MLJ (S.C.) 7.
Section 82 provides for the method of assessment of property for levying property tax. Section 82(2) says as under:

"The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year (less a deduction in the case of buildings, of ten per cent, of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and adjacent lands occupied as an appurtenance thereto)".

So far as the third judgment cited above is concerned, it is held therein:

"Whenever there is an enhancement in the assessment pursuant to a general revision, it is the duty of the executive authority to issue a special notice to the taxpayer as provided under the proviso to Rule 9. The court is of the view that the special notices issued by the executive authorities under Rule 9 informing the assessees about the enhancement in the assessment shall contain reasons for the increase and if the reasons for the increase in the assessment are not given in the special notice the assessee may not know on what ground the enhancement has been made and consequently, he cannot be able to put forward his objections specifically and effectively. As no reason is stated in the special notices for enhancement of property tax in these cases, that cannot be sustained."

5. On the part of the respondent, since no appearance had been made, this Court is left with no option but to pass orders in the above revision petition, in consideration of the facts and circumstances pleaded on the part of the petitioner, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner.

6. A perusal of the order passed by the lower appellate court dated 30.8.1996 would show that the learned Judge, not only tracing the facts, but also framing proper point for consideration whether the order passed by the tribunal is proper and correct, would find that the tribunal, in the light of the pleading of the appellant that the actual construction was only 7200 sq. ft. and the monthly rent to be realised was Rs.10,465/-, would further find that the extent of 1740 sq. ft. was in the occupation of the owner for residential purposes and 22 00 sq.ft. was in the occupation of the tenants and that the owner was in occupation of 460 sq.ft. for commercial purposes and the tenant occupied an extent of 4400 sq. ft. for commercial purposes and that the age of the building was 10 years, the original rental value was Rs.5,350/= and it was proposed to be increased to Rs.17,140/=, thus the rent realised being Rs.15,480/=.

7. The court below would further find that in the ground floor, the tenants are running a shop and the first floor is also being used for commercial purposes; that the second floor is occupied by the owner for residential purpose and for office purpose as well and the third floor has been let out for tenants for residential purpose; that the floor is mosaic and the roof is terraced and these facts have not been seriously disputed.

8. The lower court further going into the orders of the tribunal and the legal points raised therein, would fix the rental value at Rs.16 ,000/= per month and that the petitioner had not chosen to examine any of the tenants to prove the actual payment of rent and in the estimate of the respondent, the rent reaslised was Rs.15,480/= and taking into consideration that the extent of 4400 sq. ft. is in the occupation of the tenants for commercial purposes, an extent of 460 sq.ft. was in the occupation of the owner for commercial purposes and further an extent of 2200 sq.ft. was in the occupation of the tenants and 174 0 sq.ft. was in the occupation of the owner for residential purpose, there was no difficulty in arriving at the conclusion that the rental value had to be naturally enhanced and hence fixing the rental value at Rs.15,000/= per month, the lower appellate court would pass its verdict, thus slightly modifying and fixing the rental value by the tribunal to this extent and passing the order accordingly.

9. Accepting the norms fixed by the upper forms of law as given in the judgments cited above, according to which, while the fair rent is fixed in accordance with the statutory provisions by the rent controller, the application of the provisions of the Rent Control Act as held by the first judgment cited supra by the petitioner does not arise and further only in adherence of the legal principles embodied in the Act concerned, the fixation of the rent for the demised building has been assessed by the tribunal and some of the grounds raised herein have neither been raised before the tribunal nor before the appellate court, and therefore, the petitioner is not entitled to raise the same before this court as the first time, since no opportunity had been afforded for the lower authorities to consider such points, and hence, it is safe to arrive at the conclusion that only in observance of the legal norms and following the procedures established by law, valid conclusions have been arrived at in the fixation of the rent for the building premises of the petitioner and there is no illegality or infirmity or inconsistency committed on the part of both the tribunal and the appellate court, so as to cause interference into the same. Nor is there any legal necessity or compelling circumstance for this revisional court to cause its interference making use of its supervisory power conferred under Article 227 of the Constitution of India. Therefore, the only course open for this court, in these circumstances, is to dismiss the above revision petition as without merit and to confirm the orders of the tribunal and the appellate court as well.

In result, the above civil revision petition fails and the same is dismissed as without merit.

The judgment and decree dated 30.8.1996 made in M.T.A. No.58 of 1994 by the Court of Principal Judge, City Civil Court, Madras, thereby partly

allowing the appeal, thus modifying the order passed by the Chairman, Taxation Appeals Committee, Corporation of Madras in T.A.C. No.1003 of 1993 dated 16.11.1994 and fixing the rent in the manner effected therein, is confirmed.

Consequently, C.M.P. No.14163 of 1997 is also dismissed.
However, in the circumstances of the case, there shall be no order as to costs.

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